

FILED

JUL 10 2023

CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA
SAN JOSE OFFICE

1 KEVIN MOE MOORE AG3258
2 NORTH KERN STATE PRISON
3 A1-133, P.O., BOX 5000
4 DELANO, Ca. 93216
5

6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8 SAN JOSE DIVISION
9

10 KEVIN MOE MOORE)

11 PLAINTIFF,)

12 V.)

13 SALINAS VALLEY STATE)

14 PRISON, et al..)

15 DEFENDANTS.)

CASE No. 5:21-cv-01019-EJD

PLAINTIFFS OPPOSITION TO

DEFENDANTS MOTION FOR

SUMMARY JUDGEMENT, AND

MEMORANDUM OF POINTS AND

AUTHORITIES IN SUPPORT OF

16 -----) JUDGE: THE HON. EDWARD J. DAVILA
17

18 INTRODUCTION

19 COMES NOW PLAINTIFF KEVIN MOE MOORE, PROCEEDING IN Pro Se. AND
20 HEREBY MOVES THIS HONORABLE COURT TO DISMISS DEFENDANTS MOTION FOR
21 SUMMARY JUDGEMENT, IN THE ABOVE ENTITLED ACTION.

22 THE OPERATIVE COMPLAINT WAS FILED ON 01/25/2021 (DOC. No. 1)
23 ON 06/07/2023 DEFENDANTS FILED ON A MOTION FOR SUMMARY JUDGMENT, AND
24 PLAINTIFF NOW FILES HIS OPPOSITION TO THAT MOTION.

25 MEMORANDUM OF POINTS AND AUTHORITIES

26 PROCEDURAL BACKGROUND

27 THE OPERATIVE PLEADING FILED ON JANUARY-25th, 2021, THE COURT COND-
28 UCTED AN INITIAL SCREENING AND DISMISSED ONE OF PLAINTIFFS CLAIMS
29

1 LEAVING 2(TWO)[SSF 1,4.]WITH LEAVE TO AMEND,BUT PLAINTIFF CHOSE TO
 2 PROCEED ON THE EIGHTH AMENDMENT CLAIM IN AN EFFORT TO SAVE THE COU-
 3 RT TIME IN THIS MATTER.

4 LEGAL STANDARD FOR SUMMARY JUDGMENT OPPOSITION

5 COURTS SHOULD " CONSTRUE LIBERALLY MOTION PAPERS AND PLEADINGS
 6 FILED BY Pro Se INMATES,AND SHOULD AVOID APPLYING SUMMARY JUDGMENT
 7 RULES STRICTLY." THOMAS V. PONDER,611 F.3d 1144,1150(9thCir.2010)
 8 (CITING FROST V. SYMINGTON 197,F.3d 348,352(9th Cir.1999)"LIBERAL
 9 CONSTRUCTION IS THUS THE APPROPRIATE STANDARD TO APPLY " Id.

10 WHEN OPPOSING A MOTION FOR SUMMARY JUDGMENT THE " NON-MOVING
 11 PARTY'S EVIDENCE IS TO BE BELIEVED,AND ALL JUSTIFIABLE INFERENCES
 12 ARE TO BE DRAWN IN(PLAINTIFFS)FAVOR...(PLAINTIFFS)VERSION OF ANY
 13 DISPUTED ISSUE OF FACT IS THUS PRESUMED CORRECT." Id.AT 1149(QUO-
 14 TING EASTMAN KODAK Co. V. IMAGE TECHNICAL SERVICE INC.,504 U.S.451
 15 456(1992)(INTERNAL QUOTATION MARKS OMITTED).PLAINTIFF WILL HAVE TO
 16 BRING FORTH EVIDENCE ESTABLISHING A GENUINE ISSUE OF MATERIAL FACT
 17 IN THIS OPPOSITION,I bid.AT 1149," AN ISSUE OF MATERIAL FACT IS
 18 GENUINE IF THERE IS SUFFICIENT EVIDENCE FOR A REASONABLE JURY TO
 19 RETURN A VERDICT FOR THE NON-MOVING PARTY:Id.AT 1150(QUOTING LONG
 20 V. COUNTY OF LOS ANGELES.442 F.3d 1178,1185(9th Cir.2006)ADDITION-
 21 ALLY,AFFIDAVITS IS EVIDENCE " FOR PURPOSES OF DETERMINING WHETHER
 22 A GENUINE ISSUE OF MATERIAL FACT EXIST." JACKSON V. DUCKWORTH,955
 23 F.2d 21,22(7th Cir.1992)(CITING FED.R.CIV.P.56^(c),AND " IF CONFLICTI-
 24 NG INFERENCES MAY BE DRAWN FROM THE FACTS,THE CASE MUST GO TO THE
 25 JURY," RUTHERFORD V. CITY OF BERKELEY,780 F.2d 1444,1448(9th Cir.
 26 1986).

27 FINALLY IN RESOLVING A SUMMARY JUDGMENT MOTION,THE COURT EXAMINES
 28 PLEADINGS,DEPOSITIONS,ANSWERS TO INTERROGATORIES,AND ADMISSIONS ON

FILE, TOGETHER WITH THE AFFIDAVITS, IF ANY. FED. R. CIV. P. 56(c), HOWEVER, IN THE ENDEAVOR TO ESTABLISH THE EXISTENCE OF A FACTUAL DISPUTE, THE OPPOSING PARTY NEED NOT ESTABLISH A MATERIAL ISSUE OF FACT CONCLUSIVELY IN ITS FAVOR, IT IS SUFFICIENT THAT " THE CLAIMED FACTUAL DISPUTE BE SHOWN TO REQUIRE A JURY OR JUDGE TO RESOLVE THE PARTIES DIFFERING VERSIONS OF THE TRUTH AT TRIAL." T.W. ELEC. SERV. INC. V. PACIFIC ELEC. CONTRACTORS ASS'N. 809 F.2d 626, 630 (9th Cir. 1987). THUS THE " PURPOSE OF SUMMARY JUDGMENT IS TO PIERCE THE PLEADINGS AND TO ASSESS THE PROOF IN ORDER TO SEE WHETHER THERE IS A GENUINE NEED FOR TRIAL." MATSUSHITA ELEC. INDUS. CO. V. ZENITH RADIO CORP. 475 U.S. 574, 587 (1986) (QUOTING FED. R. CIV. P. 56(e)) ADVISORY COMMITTEE'S NOTE ON 1963 AMENDMENTS.)

REPLY ARGUMENT

1. DOCUMENT 43 pg. 13 LINE 16-19: DEFENDANTS ALLEDGE THAT THERE IS NO EVIDENCE THAT PROVES THAT THEY HAD A " SUFFICIENTLY CULPABLE STATE OF MIND " AND REFERENCE FARMER, 511 U.S. at 834. HERE DEFENDANTS ARE ASSUMING THE ROLE OF THE VICTIM AND ARE ADMITTING LIABILITY FOR THE DELIBERATE INDIFFERENCE TO PLAINTIFFS MEDICAL NEEDS BY NOT HAVING A " SUFFICIENTLY CULPABLE STATE OF MIND "(IN THEIR PROFESSION) THEY ARE OBLIGATED TO HAVE A CULPABLE STATE OF MIND, ITS THEIR JOB AS A PROFESSIONAL, BY SAYING THEY DID NOT HAVE SUFFICIENTLY CULPABLE STATE OF MIND. THEY ARE ADMITTING TO NEGLIGENCE.

2. DOCUMENT 43 pg. 12 LINE 17-18 & 24-28: DEFENDANTS REFERENCE, CONN, 591 F 3d at 1095. IN CONN. MEDICAL EVALUATION FOUND THE DECENDANT TO BE AT SERIOUS RISK BECAUSE DECENDANT HAD THREATEND TO KILL HERSELF. HAD A LONG HISTORY OF MENTAL HEALTH PROBLEMS. ALCOHOL AND SUBSTANCE ABUSE AND SUICID THREATS AND ATTEMPTS INCLUDING SUCIDE IDEATION. THE PURPOSE OF DEFENDANTS REFERENCE, IS THEY ARE CLAIMING ON LINE 28

1 THAT " NONE " OF THE ABOVE FACTORS APPEAR IN PLAINTIFFS CASE,WHEN
 2 IN FACT " ALL " FACTORS ARE PRESENT IN CURRENT CASE.(THIS IS A BLA-
 3 TANT ATTEMPT TO DECEIVE THE COURT)SEE DEPOSITION DOCUMENT 43-9(AG01-
 4 44)(AG0150)(AG0145).

5 3.DEFENDANTS ARE KNOWINGLY USING DECEPTIVE PLAYS ON WORDS,AND USING
 6 INSERTS AND HALF-TRUTHS IN ATTEMPTS TO DECEIVE THE READER AND MANIP-
 7 ULATE THIS HONORABLE COURT BY PURPOUSLY MISPLACING PIECES OF MENTAL
 8 HEALTH RECORDS,AND PLACING THEM IN A WAY THAT MORE FITS THEIR AGENDA
 9 BUT WHEN READ IN ITS TOTALITY IT HAS THE OPPOSITE EFFECT OR MEANING.

10 4.DOCUMENT 43 pg.4 LINE 4-5(DEFENDANTS DECEITFUL PLAY)STATING THAT
 11 PLAINTIFF ADMITTED ONLY CLAIMING TO BE SUICIDAL TO GET HELP & WAS
 12 NOT SUICIDAL.

13 5.DOCUMENT 43-9 pg.74 LINE 19-25 CONTINUED TO pg.75 LINE 1-9 DEPOS-
 14 ITION.PLAINTIFFS COUNTER TO DEFENDANTS DECEPTIVE PLAY.

15 6.DOCUMENT 43 pg.4 LINE 21-22(DEFENDANTS DECIET)CLAIMING PLAINTIFFS
 16 MAIN CONCERN WAS TO GET BULK MEDICATION & WAS'NT SUICIDAL.

17 ~~PLAINTIFFS COUNTER TO DECEPTION,DOCUMENT 43-9,pg.80 LINE 8-14 DEPOS-~~
 18 ~~ION.~~

19 7.DOCUMENT 43 pg.13 LINE 22-23(DEFENDANTS DECEPTION)" CLAIMS PLAIN-
 20 TIFFHAD NO SUICIDAL HISTORY WHILE INCARCERATED" WHILE ALL DEFENDA-
 21 NTS AKNOWLEDGES THEY READ PLAINTIFFS HISTORY DATING BACK TO [2014].
 22 DOCUMENT 43 pg.4 LINE 14-15.DOCUMENTS PROVING HISTORY 43-4 pg.146
 23 (AG0144)REPORTED BY DEFENDANT DUNLAP.43-3 pg.2 LINES 24-25.

24 DEPOSITION:DOCUMENT 43-9 pg.142(AG0140)(C-55R5 SUICIDAL BEHAVIOR)
 25 43-4 pg.2 LINE 24-25

26 8.DOCUMENT 43 LINE 25-26(DEFENDANTS DECIET)43-3 pg.3 LINE 22-24
 27 PLAINTIFF NEVER DENIED SUICIDAL IDEATION ON THE DAY OF JULY 3rd
 28 EVERY INSERT USED BY DEFENDANTS STATING THAT PLAINTIFF DENIED BEING

1 SUICIDAL WAS MONTHS & WEEKS BEFORE SUICIDE ATTEMPT AND THE CALCULATED
2 USAGE OF THOSE DATES ARE DONE WITH THE INTENT TO DECEIVE THIS HONOR-
3 ABLE COURT/DEPOSITION DOCUMENT 43-9 pg.80 LINE 8-14 PLAINTIFFS COU-
4 NTER.

5 9.DOCUMENT 43 pg.11 LINE 7-8(DEFENDANTS DECEIT)DEFENDANTS CLAIM PLA-
6 INTIFF DID'NT WARRENT A HIGHER LEVEL OF CARE BASED ON ALREADY RECEI-
7 VING 30-MINUTE CHECKS,WHILE TESTIFYING IN OTHER AREAS OF THIS SUMM-
8 ERY JUDGEMENT THAT CHECKS ARE HOURLY,ANOTHER PLOY TO TRY AND DECIEVE
9 THIS HONORABLE COURT.

10 10.DOCUMENTS SHOWING THAT THERE WERE HOURLY CHECKS INSTEAD OF THE
11 STATED 30MINUTE CHECKS:DOCUMENT 43-2 pg.3 LINE 18-19/DOCUMENT 43-3
12 pg.3 LINE 18-20/DOCUMENT 43-4 pg.3 LINE 20-22/DOCUMENT 43-5 pg.5
13 LINE 26-27.

14 11.DOCUMENT 43 pg.15 LINE 5-6/43-2 pg.LINE 3-5,DOCUMENT 43 pg.2
15 LINE 13-18(DEFENDANTS DECEIT)DEFENDANTS CLAIM NOT TO HAVE KNOWN
16 ABOUT MENTAL HEALTH REQUEST PRIOR TO EVALUATION,DOCUMENT 43 pg.4 LT-
17 ~~LINE 14-15/DOCUMENT 43-1 pg.3 LINE 19-20/DOCUMENT 43-2 pg.2 LINE~~

18 ~~19-20/DOCUMENT 43-3 pg.2 LINE 24-25.~~

19 12.ALL DEFENDANTS REFERENCE DOCUMENT 43-9[MENTAL HEALTH FORM]" CHRO-
20 NIC & ACUTE RISK FACTORS "WHICH IS AN EVALUATION OF THIRTY-THREE
21 RISK FACTORS FROM WHICH THEY CLAIM ONLY SIX APPLIED TO THE PLAINTIFF
22 AS REASONING FOR THEIR DECISION.IT'S EVIDENT THROUGHOUT THE RECORD
23 THAT AN ADDITIONAL(10)TEN RISK FACTORS SHOULD HAVE BEEN APPLIED TO
24 PLAINTIFF,WHICH WOULD HAVE MADE IT A TOTAL OF(16)SIXTEEN RISK FACT-
25 ORS INSTEAD OF SIX,PG.5 LINES 3-4 CIT AS A WHOLE ACKNOWLEDGES THE
26 EVALUATION;PG.13 LINES 5-11 THIS EVALUATION WAS USED TO GIVE THEIR
27 CLAIM VALIDITY;PG.13 27-28,EVALUATION WAS REFRENCED PG. 14 LINES
28 1-5 EVALUATION WAS REFRENCED AGAIN;pg.14 LINES 13-15 REFRENCED

AGAIN;pg.16 LINES 18-22 REFRENCED;

13.DOCUMENT 43-2 DECLERATION OF J.GOMEZ DEFENDANT,[INDIVIDUALLY RE-
FFRENCES THE EVALUATION PG.3 LINES 1-3 & LINES 6-10]

14.DOCUMENT 43-3 DECLERATION OF J.DUNLAP,[DEFENDANT INDIVIDUALLY
REFRENCES THE EVALUATION PG.3 LINES 1-2 & LINES 8-9,14-15,20-22].

15.DOCUMENT 43-4 DECLARATION OF A.NIX DEFENDANT[INDIVIDUALLY REFRE-
NCES THE EVALUATION PG.3 LINES 3-4,1011,16-17,22-24].

16.DOCUMENT 43-5 DECLARATION OF R.CANNING PHD SUPPORTER OF DEFENDA-
NTS MOTION FOR SUMMARY JUDGEMENT ALSO REFRENCED THE EVALUATION PG.
7 LINES 9-25].

THIS EVALUATION WAS REFRENCED OVER(20)TWENTY TIMES THROUGHOUT
THIS REQUEST FOR SUMMERY JUDGEMENT,PROVING HOW CRITICLE THIS EVALU-
ATION WAS AND IS TO THE DECISION MADE BY THE C.I.T.CRISIS INTERVEN-
TION TEAM AND HOW IT IS RELIED ON TO JUSTIFY & GIVE VALIDITY TO
THEIR CLAIMS BUT IT WAS NOT ACCURATE AND AN ADDJTIONAL(10)TEN RISK
FACTORS SHOULD HAVE BEEN ASSESSED FOR THE DECISION MAKING WHICH
~~WOULD HAVE PUT PLAINTIFFS RISK FOR SUICIDE MUCH HIGHER.~~

17.DOCUMENT 43-9 MENTAL HEALTH FORMS/CHRONIC & ACUTE RISK FACTORS
MARKED[NO]THAT SHOULD HAVE BEEN MARKED[YES]

HIGHTENING PLAINTIFFS RISK OF SUICIDE.

#1.FIRST PRISON TERM:MARKED[NO],SHOULD HAVE BEEN MARKED[YES]BASED
ON PLAINTIFF BEING INCARCERATED SINCE 2009,PLAINTIFFS FIRST AND
ONLY PRISON TERM WHICH HE IS STILL SERVING TO DATE.

#2.HISTORY OF ABUSE MARKED[NO],SHOULD HAVE BEEN MARKED [YES]BASED
ON DRUG AND ALCHOLE ABUSE WHICH IS EVIDENT THROUGHOUT THE RECORD
REFER TO DOC.AG0169.

#3.SINGLE CELL PLACEMENT MARKED[NO]SHOULD HAVE BEEN MARKED[YES]
BASED ON PLAINTIFF WAS SINGLE CELL STATUS AT THE TIME REFER TO DOC.

1 43-9 AG0136,AG0137"DEPOSITION".

2 #4.NEGETIVE HOUSING CHARGE IN HOUSING MARKED[NO]BUT SHOULD HAVE BE-
3 EN MARKED[YES]BASED ON PLAINTIFF BEING REMOVED FROM(G.P.)GENERAL
4 POPULATION,AND PUT IN AD-SEG SINGLE CELL PENDING MURDER INVESTIGAT-
5 ION.,REFER TO DOC. 43-9 AG0136,AG0137.

6 #5.DISTURBANCE OF MOOD/LIABILITY MARKED[NO]SHOULD HAVE BEEN MARKED
7 [YES]BASED ON NUMEROUS REPORTS BY MENTAL HEALTH STAFF CLAIMING THAT
8 PLAINTIFF EXPRESSED HOW HE FELT ABOUT THE DEATH OF HIS BROTHER AND
9 SISTER & THE LOSS OF SLEEP,AS WELL AS HEARING VOICES.DOC.43-9 AG01-
10 46/AG0150/AG0168..

11 #6.CURRENT RECENT DEPRESSIVE SYMPTOMS MARKED[NO]BUT SHOULD HAVE BE-
12 EN MARKED [YES]BASED ON NUMEROUS REPORTS FROM MENTAL HEALTH,PLAINT-
13 IFF EXPRESSED FEELING RE-TRAUMATIZED FROM HIS ORIGINAL CASE,DEALING
14 WITH THE LOSS OF HIS BROTHER & SISTER,NOT GETTING A RESPONSE FOR
15 MONTHS FROM MENTAL HEALTH AFTER CONTINUOUS REOUEST REFER TO DOC.34-
16 5 AG0016,DEPOSITION43-9 AG0146,AG0150,AG0168.

17 ~~#7.HOPELESSNESS AND HELPLESSNESS MARKED[NO]BUT SHOULD HAVE BEEN~~
18 MARKED[YES]BASED ON 602 WHERE PLAINTIFF STATED THAT HE FELT LIKE
19 HIS MENTAL HEALTH WAS'NT BEING TAKEN SERIOUS.34-5 AG0016.

20 #8.-CURRENT/RECENT PSYCHOTIC SYMPTOMS MARKED[NO]BUT SHOULD HAVE
21 BEEN MARKED[YES]BASED ON MENTAL HEALTH REPORTS OF PLAINTIFF COMPL-
22 AINING ABOUT HEARING VOICES DOC.43-9 AG0146/AG0150/AG0168,34-5.

23 #9CURRENT?RECENT ANXIETY OR PANIC SYMPTOMS MARKED[NO]BUT SHOULD HA-
24 VE BEEN MARKED[YES]BASED ON MENTAL HEALTH REPORTS WHERE PLAINTIFF
25 EXPRESSED CONCERNS ABOUT RETURNING TO B-YARD LEVEL 4,WHICH IS ACK-
26 NOWLEDGED THROUGHOUT DEFENDANTS SUMMARY JUDGEMENT REOUEST DOC.43-9
27 AG0146/AG0150/AG0168,34-5.

28 #10.AGITATED OR ANGRY MARKED[NO]BUT SHOULD HAVE BEEN MARKED[YES]

1 BASED ON REPORTS OF SLEEPLESSNESS DOC.43-9 AG0146/AG0150/AG0168,34-
2 5 DEPOSITION.

3 DOC.43,pg.5 LINES 18-19 DEFENDANTS ATTORNEY CLAIMS THAT PLAINTIFF
4 WAS FOUND RESPONSIVE AS UNDISPUTED FACT,WHEN IN FACT ON RECORD COO-
5 BERATED BY (6)SIX OFFICERS INCIDENT REPORTS,AND FINAL REPORT BY
6 MEDICAL STAFF STATING THAT PLAINTIFF WAS FOUND UNRESPONSIVE.

7 DOC.43-5 pg.8 LINE 3 DEFENDANTS(EXPERT)R.CANNING PHD DOUBLES DOWN
8 ON CLAIMING PLAINTIFF WAS FOUND RESPONSIVE AS AN UNDISPUTED FACT.

9 IT WOULD SEEM THAT THE ATTORNEY FOR DEFENDANTS IS ATTEMPTING TO
10 LESSEN THE SEVERITY OF PLAINTIFFS ATTEMPTED SUICIDE SPOUTING FALSE-
11 HOOD AFTER FALSE HOOD BLATANTLY.

12 DOCUMENTS WHICH REPORT THE UNRESPONSIVENESS OF PLAINTIFF:43-9 THE
13 FINAL REPORT FROM MEDICAL(AG0161).

14 INCIDENT REPORT PACKAGE INCIDENT LOG #000000000009326

15 J.TOVAR (AG0189)

16 C.MORLET (AG0188)

17 R.REYNOSO (AG0188)

18 S.LOPFZ (AG01870

19 R.UMAGAT (AG0187)

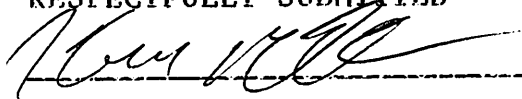
20 M.STEMS (AG0185)

21 43-9 MENTAL HEALTH FORM (AG0141)

22 18.BASED ON THE CIRCUMSTANCES AND DISCUSSIONS HEREIN PLAINTIFF NOW
23 REQUEST THAT THIS HONORABLE COURT DISMISS DEFENDANTS REQUEST FOR
24 SUMMARY JUDGEMENT AND GRANT PLAINTIFF LEAVE TO PROCEED IN THE FUR-
25 THERANCE OF JUSTICE,I DECLARE UNDER PENALTY OF PERJURY THAT THE
26 FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE OR BASIS
27 OF INFORMATION AVAILABLE TO ME,AND THOSE I BELIEVE TO BE TRUE BAS-
28 ED ON SUCH INFORMATION.

1 DATED: 7-3-2023

2
3 RESPECTFULLY SUBMITTED

4 A handwritten signature in black ink, appearing to read 'Wm. H. H.', is written over a horizontal dashed line.

PROOF OF SERVICE BY MAIL;

[C.C.P. §§ 1013, 2015.5; U.S.C. 28 §§ 1746]

STATE OF CALIFORNIA)

KERN COUNTY)

I, ("A") Kevin Moe Moore am a resident of the North Kern State Prison in Delano, Kern County, California, and I am at least 18 years of age. My mailing address is:

P.O BOX 5000, Delano, California 93216- 5000

On ("B") 7-3-2023 I served a true and correct copy of the following document(s):

("C") Plaintiffs Opposition To Defendants Motion For Summary Judgment And Memorandum Of Points And Authorities In Support Of

to each party listed below by placing them in an envelope with adequate postage attached or provided for and by depositing said envelope in a box for UNITED STATES MAIL at the N.K.S.P., Delano address.

This copy is being mailed to: Office of the clerk, us District Court Northern District of California, 280 South First Street Room 2112, San Jose California 95113-3095

I have mailed additional copies to:

600 West Broadway, Suite 1800 San Diego CA 92101 P.O. Box 85266, San Diego CA 92186-5266

I declare under penalty of perjury that the foregoing is true and correct.

Dated this day of: 7-3-2023 at North Kern State Prison

Signed: [Signature] CDCR I.D. # AG3254

Kevin Moore AG3254 A1-133
North Kern State Prison
P.O. Box 5000
Delano CA 93216

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION

Office of The Clerk, U.S District Court
Northern District of California
280 South First Street Room 2112
San Jose CA, 95113-3095



P. 7/5/23

LEGAL MAIL